

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

THE 1031 TAX GROUP, LLC, *et al.*,

Case No. 07-B-11448 (MG)

Jointly Administered

Debtors.

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GERARD A. McHALE, Jr., not individually but
solely in his capacity as Chapter 11 trustee for
THE 1031 TAX GROUP, LLC, *et al.*,

Plaintiff,

-v-

Adv. Pro. No. 08-01034 (MG)

EDWARD H. OKUN,

Defendant.

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**ORDER FURTHER EXPLAINING ENTRY OF FINAL AND
PERMANENT INJUNCTION AND JUDGMENT**

Gerard McHale, the Chapter 11 Trustee for estate of The 1031 Tax Group, LLC, et al., (“Trustee”) sought entry of an order permanently enjoining Edward H. Okun (“Okun”) to turn over to the estate all property conveyed to the estate under an agreement dated October 11, 2007 (“Transfer Agreement”). The Court approved the Transfer Agreement by order entered on October 26, 2007. On February 11, 2008, the Court held a hearing on the Trustee’s motion for a preliminary and permanent injunction, and correspondingly heard evidence and argument on a motion filed by Okun pursuant to FED. R. CIV. P. 60(b) seeking to void the Transfer Agreement or to excuse Okun’s performance thereunder. At the conclusion of the hearing, the Court ruled from the bench, denying Okun’s Rule 60(b) motion and granting the Trustee’s motion for a

permanent injunction. The Court then directed counsel for the Trustee to submit a proposed order, which he did on February 12, 2008.

Okun's counsel then filed a letter objecting in part to the proposed order. Okun's counsel has no objection to the first and fourth "Ordered" paragraphs (1) granting the Trustee's requested permanent injunction as to specified items conveyed under the Transfer Agreement, and (2) denying Okun's Rule 60(b) motion. However, Okun's counsel objected to the second and third "Ordered" paragraphs. The second paragraph seeks to compel Okun to immediately transfer any and all property in his possession, custody, or control to the Trustee, whether acquired before or after the effective date of the Transfer Agreement, except for certain property specifically excluded from the terms of the Transfer Agreement. The third paragraph requires Okun to account in writing for all income in which Okun has an interest but has not yet been conveyed to the Trustee, for all after-acquired income or property, and any income or property conveyed to any attorney or other person since October 11, 2007. The order requires that the accounting be provided to the Court within ten days.

The Court sustains Okun's objections to the proposed order. The scope of an injunction "shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained" FED. R. CIV. P. 65(d). The specificity requirement in Rule 65(d) "was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). Essentially, it is a mandate "that the party enjoined must be able to ascertain from the four corners of the order precisely what acts are forbidden." *Sanders v. Air Line Pilots Ass'n., Intern.*, 473 F.2d 244, 247 (2d Cir. 1972). The second "Ordered" paragraph in the Trustee's proposed

order is unnecessarily vague in that no particular property is identified and it requires reference to the Transfer Agreement itself. An injunction intended to provide a basis for a future contempt citation would be subject to reversal on appeal if it failed to meet the specificity requirement. *Common Cause v. Nuclear Regulatory Comm'n*, 674 F.2d 921, 927 (D.C. Cir. 1982). While Okun's failure to abide by the terms of the Transfer Agreement may be the basis for breach of contract or turnover claims by the Trustee, the vague language of paragraph 2 of the proposed order cannot be approved, and cannot be the basis for future contempt proceedings against Okun for violating the terms of the contractual agreement.

Similarly, the third "Ordered" paragraph in the Trustee's proposed order also cannot be approved. At the hearing, counsel for the Trustee and counsel for Newton Bayard Limited Partnership questioned Okun and Mr. Bass (one of Mr. Okun's attorneys) regarding payments to several of Okun's various attorneys, potentially with funds that should have been turned over through the Transfer Agreement. Much of the testimony was conflicting, and Okun repeatedly asserted his Fifth Amendment privilege during examination. However, the request for an accounting was not made in the Trustee's moving papers and was not sought at the hearing. Moreover, the Transfer Agreement does not contain any provisions requiring an accounting. Based on this testimony alone, the Court cannot order the accounting.

In conjunction with this order explaining the court's reasoning, a separate order will be entered granting the Trustee's requested permanent injunction and denying Mr. Okun's Rule 60(b) motion, excluding the paragraphs as to which the objections are sustained.

Dated: February 13, 2008
New York, New York

SO ORDERED.

/s/ Martin Glenn
Martin Glenn, U.S. Bankruptcy Judge